

REMARKS

The present application includes pending claims 1-57, of which claims 13, 26, and 35-57 have been withdrawn from consideration. Claims 1-12, 14-25, and 27-34 have been rejected. By this Amendment, claims 1, 5, 11, 14, 18, and 24 have been amended as set forth above. The Applicants respectfully submit that the pending claims define allowable subject matter.

The drawings were objected to because they do not show a seal member. The Applicants respectfully submit, however, that the seal member is adequately described within the specification. For example, ¶ [34] of the present application states the following:

A seal member (not shown) may be interposed between the cover 20 and the base 18 for sealing against moisture infiltration into the housing 12. The seal member may be in the form of a compressible elastomeric seal, such as a rubber o-ring.

The seal member is also described in ¶¶ [09] and [35]. As such, the Applicants respectfully submit that description of the seal member provides sufficient support for claims 6, 19, and 31, and request that the Examiner reconsider the objection.

Claims 1-4, 7, 10, 12, 14-17, 20, 23, and 25 were rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 2,877,051 (Cushman). Claims 1-4, 7, 8, 12, 14-17, 20, 21, and 25 were rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 5,980,100 (Haegeman). Claims 1-6, 9, 12, 14-19, 22, and 25 were rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 4,166,086 (Wright). Claims 11 and 24 were rejected under 35 U.S.C. 103(a) as being unpatentable over Haegeman in view of United States Patent No. 3,836,130 (Earhart).

Claims 27-32 were rejected under 35 U.S.C. 103(a) as being unpatentable over Haegeman in view of Wright. Claim 33 was rejected under 35 U.S.C. 103(a) as being unpatentable over Haegeman and Wright in view of Cushman. Claim 34 was rejected under 35 U.S.C. 103(a) as being unpatentable over Haegeman and Wright in view of Earhart. The Applicants respectfully traverse these rejections at least for the reasons set forth below.

The Applicants first turn to the rejection of claims 1-4, 7, 10, 12, 14-17, 20, 23, and 25 under 35 U.S.C. 102(b) as being anticipated by Cushman. Cushman “relates generally to liquid recirculating devices and particularly to a decorative or ornamental recirculating fountain providing an attractive display for homes, hotel lobbies, restaurants, lounges, and similar places.” Cushman at column 1, lines 15-19. As shown and described in Cushman, the motor and driving mechanism connected to the bailing wheel are positioned within the assembly B.

The rear wall 18 of the wheel is formed to provide a circular cup-shaped recess 22 large enough to *substantially enclose a suitable small motor 24* geared to the order of 40 to 45 R.P.M. The *motor is thus located substantially within recess 22 of the wheel, the latter being rotatably mounted thereon by any suitable means 26 fixing the recess front wall 28 to the motor shaft.*

Id. at column 2, lines 14-21 (emphasis added). The “means 26”, the motor 28, and the drive shaft of the motor are all within the main body of the assembly B. As such, Cushman does not teach, nor suggest, “an agitator connected to a distal end of a drive shaft that extends outwardly from said main body,” as recited, for example, in claim 1 of the present application. Further, the bailing wheel 14 of Cushman is within the main body of the assembly B. That is, the bailing wheel 14 does not outwardly extend from

the main body, because it is contained within it. Thus, Cushman does not teach, nor suggest, “a blade assembly extending outwardly from said drive shaft,” as recited in claim 14. Thus, at least for these reasons, Cushman does not render the claims of the present application unpatentable.

Moreover, claims 1 and 14 have been amended to include the limitations of claims 5 and 15, respectively (as filed), which were not rejected as being anticipated by Cushman. Thus, the Applicants respectfully submit that Cushman does not render the claims of the present application unpatentable at least because it does not teach, nor suggest, a “base removably secured to a cover, and an inner compartment defined between said base and cover; said motor being positioned within said inner compartment.”

Additionally, the Applicants respectfully submit that Cushman does not necessarily teach or suggest a “bird bath,” as recited in claim 2, a “livestock water trough,” as recited in claim 3, or a “swimming pool, water tower, or pond,” as recited in claim 4. Instead, Cushman relates to “liquid recirculating devices and particularly to a decorative or ornamental recirculating fountain providing an attractive display for homes, hotel lobbies, restaurants, lounges and similar places.” Cushman at column 1, lines 15-19.

Also, with respect to claim 5, Cushman does not teach, nor suggest, a dome shaped cover. Thus, at least for this reason, claim 5 is not anticipated by Cushman.

Additionally, the Applicants respectfully submit that Cushman does not teach, nor suggest “at least one blade extending from a *lateral surface of said drive shaft*,” as recited in claim 12. Instead, Cushman shows a bailing wheel 14 connected to a motor.

The Applicants now turn to the rejection of claims 1-4, 7, 8, 12, 14-17, 20, 21, and 25 under 35 U.S.C. 102(b) as being anticipated by Haegeman. Haegemann discloses “an impeller device (2) which extends below the liquid surface (11), with the motor (16) being mounted in a chamber (12) which is fully sealed from the liquid and which serves as a float (10).” Haegeman at Abstract. Haegman, however, does not teach, nor suggest, “a base removably interconnected to a cover, and an inner compartment defined between said base and cover,” and “said motor being positioned within said inner compartment,” as recited, for example, in claims 1 and 14. The Office Action apparently agrees with this point, due to the fact that claims 5 and 27 were not rejected as being anticipated by Haegeman. In fact, the Office Action states “Haegeman does not teach a cover that with the base defines an inner compartment between the base and the cover and that the motor is positioned within this inner compartment.” *See* July 2, 2004 Office Action at page 6, Para. 9. Thus, at least for these reasons, the claims of the present application are not anticipated by Haegemen.

The Applicants also note that Haegeman does not necessarily teach, or suggest, a “bird bath,” as recited in claim 2, a “livestock water trough,” as recited in claim 3, or a “swimming pool, water tower, or pond,” as recited in claim 4. Instead, Haegeman “relates to an apparatus for treating liquids and more specifically for mixing and/or aerating liquids, such as for example waste water.” *See* Hageman at column 1, lines 4-6.

Next, the Applicants turn to the rejection of claims 1-6, 9, 12, 14-19, 22, and 25 under 35 U.S.C. 102(b) as being anticipated by Wright. Wright discloses an “aerator device for maintaining a high level of oxygen in live bait storage containers.” Wright at Abstract. Notably, the “aerator device comprises a cover for the container *on which is*

mounted a suitable drive motor.” *Id.* (emphasis added). Wright could not be any clearer – the motor is mounted on the cover, which does not cover the motor. The Office Action notes column 3, lines 55-60 as support for the motor being positioned within a space between the base and cover. This passage states, “Preferably the motor 14 is of waterproof construction so that it will be impervious to damage if it is accidentally submerged, or if it is exposed to rain, water spray and the like conditions.” *See id.* at column 3, lines 55-60. However, this passage refers to the motor itself, but not an interior chamber defined between the base and a cover in which the motor itself is positioned. Even if this passage did disclose a cover, there is no teaching or suggestion that it is removable (or removably interconnected, such as through a latch, hinge, or the like). As clearly shown in Figures 1 and 2, for example, the motor 14 is positioned on top of the cover 12. Wright does not teach, nor suggest, “a base *removably interconnected* to a cover, and an inner compartment defined between said base and cover”, “said motor being positioned within said inner compartment,” as recited in claim 1, for example. Further, Wright does not teach, nor suggest, “a cover positioned over said motor, said cover being *removably interconnected* to said base, and an inner compartment *defined between a perimeter of said base and said cover*, said motor being positioned within said inner compartment,” as recited in claim 14. Thus, at least for these reasons, Wright does not anticipate any of the claims of the present application.

Additionally, Wright actually teaches away from use with a bird bath, livestock water trough, and a swimming pool, pond, etc. These structures need to be kept open for use. For example, if a bird bath is covered, birds cannot bathe in the bird bath, thereby

defeating the purpose of a bird bath. Wright relates particularly to “bait containers.” See Wright at column 1, lines 5-7.

[T]he cover portion 12 is sized and shaped to provide a *covering for a live bait container of conventional construction.... Preferably, the cover fits snugly on the container fitting into a corresponding shoulder portion 22 on the upper edge of the container...*”

Id. at column 2, lines 51-60 (emphasis added). As clearly shown in Figure 2 of Wright, the entire bait container is covered. Wright cannot be used with a bird bath, water trough, swimming pool, and the like, in which access to the water is necessary. As such, Wright teaches away from use with such structures. Therefore, the Applicants respectfully submit that Wright does not anticipate claims 2-4 and 15-17 at least for this reason.

The Applicants now turn to the rejection of claims 11 and 24 under 35 U.S.C. 103(a) as being unpatentable over Haegeman in view Earhart. Claims 11 and 24 have been amended as set forth above. The Applicants respectfully submit that the combination of Haegeman and Earhart does not teach, nor suggest, a “timer” or “sensor.” Thus, claims 11 and 24 should be in condition for allowance at least for this reason.

The Applicants now turn to the rejection of claims 27-32 under 35 U.S.C. 103(a) as being unpatentable over Haegeman in view of Wright; claim 33 under 35 U.S.C. 103(a) as being unpatentable over Haegeman and Wright in view of Cushman; and claim 34 under 35 U.S.C. 103(a) as being unpatentable over Haegeman and Wright in view of Earhart. The Applicants respectfully submit that claims 27-34 should be in condition for allowance, at least for the reasons discussed above. For example, as detailed above, Haegeman, Wright, Cushman and Earhart, alone or in combination with one another, do

not teach, nor suggest, "a base removably secured to a cover, and an inner compartment defined between said base and cover."

The Applicants respectfully submit that the pending claims of the present application should be in condition for allowance at least for the reasons discussed above, and request reconsideration of the claim rejections. Should anything remain in order to place the present application in condition for allowance, the Examiner is kindly invited to contact the undersigned at the telephone listed below. Please charge any necessary fees or credit any overpayment to Account No. 13-0017.

Respectfully submitted,

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